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SIPDIS

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SUBJECT: INDONESIA: 2006 IPR PROJECT PROPOSALS

REF: A. JAKARTA 3296 "Police Enforcement Continues"

B. JAKARTA 3531 "Special 301 Submission"

1. Summary: The tide is turning in a favorable direction on IPR enforcement in Indonesia. A year ago, the IP industry, which was oddly cutting resources here, had marked Indonesia as the next hub for regional piracy and counterfeit syndicates. However, contrary to such expectations, over the past six months, the reform-minded Yudhoyono Administration -- with USAID assistance and encouragement from our Trade and Investment Council (TIC) talks -- has begun an earnest effort to implement new optical disc regulations (ODR) and brought enforcement efforts to new levels. One MPA regional representative describes recent events as "the most remarkable developments in Indonesia in the last six years." In May 2006, two INL-funded ICITAP senior technical advisors will begin working with the Ministry of Industry and Police to assist further the Government of Indonesia's (GOI) ODR implementation and supporting police enforcement, an initiative both agencies warmly embrace. If the success of the last year's limited USAID assistance to the Ministry of Industry is any indication, we expect these two full-time advisors and the GOI to accomplish much in the coming year. But there are many enforcement challenges here, and we should not expect to solve them all in one year, nor should we plan to dramatically reduce our engagement and assistance at a time when we finally have serious GOI attention to this issue. As such, Embassy Jakarta requests FY 2006 funding for one senior IPR technical advisor to continue to support the Indonesian police and other agencies with IPR enforcement and ODR implementation for a second and final year. End Summary.

2. In the past year, the USG has stepped up its engagement with the Government of Indonesia (GOI) on Intellectual Property Rights (IPR) protection through reinvigorated TIC talks and an IPR action plan. For the first time in recent memory, the GOI has initiated a sustained and significant enforcement campaign, backed by high level GOI political support, against pirate vendors and factories.

3. The Ministry of Industry (MOI), with USAID and IP industry support, has established and provided preliminary training to an interagency optical disc (OD) factory monitoring team. That team has registered nearly all of Indonesia's 22 known OD factories, issued SID codes, and started regular random and unannounced inspections. Following a late December directive from Indonesia Police Chief Sutanto to step up IPR enforcement, the police have worked with the IP industry to conduct sustained raids against street and mall vendors and factories. Throughout the greater Jakarta metropolitan area alone, MPA representatives tell us police in February conducted 211 raids, detained 145 individuals, and seized more than

200,000 pirated optical discs. Jakarta police informed us they have eighteen individuals under detention and awaiting prosecution for IPR infractions, including one factory owner from a February 9 raid. IP industry reps tell us piracy levels in Jakarta are down by as much as 10 percent, and by as much as 60 percent in Surabaya, Indonesia's second largest city.

¶4. These are impressive developments given that a year ago, the IP industry, which was oddly cutting its resources here, had marked Indonesia as the next hub for regional piracy and counterfeit syndicates. Still, there remains much work to be done, and it is important to safeguard and nurture the current positive momentum by building on USAID's efforts to establish and train the MOI-led OD factory monitoring team.

¶5. We are very grateful for two FY 2005 INL-funded ICITAP senior IPR technical advisors for Indonesia, both of whom will begin their engagements in May 2006. One advisor will follow-up on USAID's recently-completed assistance efforts and provide full-time support for the Ministry of Industry OD factory monitoring team's efforts to implement a credible and effective factory monitoring regime. The second advisor will provide full-time enforcement training and technical support to Indonesian National Police that will complement the efforts of the first advisor. The GOI has warmly welcomed this initiative and we expect the two advisors to accomplish much in the next year.

¶6. However, in our judgment, it would be a mistake to dramatically reduce our engagement and assistance after one year when we have serious GOI attention to this issue. As such, Embassy Jakarta requests FY 2006 funding to provide one senior IPR technical advisor to the GOI to continue to support the Indonesian police and other agencies with IPR

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enforcement and ODR implementation for a second and final year. Specifically, that advisor would build off the accomplishments of his two predecessors, collaborate further with police and what should be a fully operational OD monitoring team, and continue to focus more attention on training and advice for the Attorney General's Office and Courts in support of more prosecutions.

IPR Enforcement and Prosecution Mentoring

¶7. The Indonesian police Special Economic Crimes Division has chief responsibility for IPR enforcement, including optical media piracy. Indonesian prosecutors and the courts have a poor record for IPR prosecutions and, with the upswing in police enforcement activity, are quickly becoming a new center of focus. (Note: Two Indonesian prosecutors attended a one-week USPTO course on IPR enforcement in the U.S. last month, and more are expected to attend an IPR enforcement seminar in Hong Kong in May). The Ministry of Justice Directorate General for IPR nominally coordinates GOI IPR enforcement and awareness efforts. Our advisor would be attached directly to the police, but would liaise and coordinate closely with all five agencies. Ideally, the senior advisor would have law enforcement and IPR investigative experience, preferably in Indonesia or Southeast Asia. The IPR advisor's specific duties would include:

- Mentoring police on IPR investigation techniques, including technical training related to ODR implementation, identification of end-user piracy, and internet-related piracy.
- Cooperating closely with MOI optical disc factory monitoring team and IP industry representatives to identify unregistered factories and establish targets for factory, retail and end-use raids.
- Working closely with police investigators, the US DOJ Resident Legal Advisor (RLA) in Jakarta, and DOJ's new

regional IPR Enforcement Coordinator to mentor prosecutors and ensure appropriate follow-on investigations and referrals of cases for prosecution.

-- Developing closer cooperation on IPR enforcement between police, other agencies (i.e.: customs, MOI, Ministry of Trade, Ministry of Justice, Attorney General's Office and the Criminal and Commercial Courts).

-- Developing effective and appropriate media awareness campaigns related to IPR enforcement.

Existing USG Programming

18. The FY2006 advisor would continue to complement other USG near-term USG assistance projects in the IPR area, include the following:

-- USAID is providing up to USD 20 million to reform and strengthen Indonesia's specialized courts. Emphasis will be on the Commercial Court, which has responsibility for IPR and bankruptcy cases, and on the Anti-Corruption Court. This effort will provide technical assistance to enhance administration; training to improve and expedite adjudication; and, hardware to modernize operations. According to IPR Industry representatives, most Commercial Court decisions on IPR cases, particularly trademark cases, have been decided correctly.

-- DOJ/OPDAT, with USD 700,000 in INL funding, is providing a full-time U.S. Resident Legal Advisor (RLA) through 2007 to work with the Indonesian Attorney General's Office. The RLA is training Indonesian prosecutors and providing technical assistance, including that related to IPR, to Indonesia's Transnational Crime Task Force. We will also expect the newly appointed DOJ IPR Enforcement Coordinator in SE Asia, stationed in Bangkok, to support these efforts. The IPR Enforcement Coordinator, a DOJ prosecutor who will be visiting Jakarta in May, will become increasingly engaged in supporting law enforcement efforts in Indonesia. The FBI legal attache at post may also provide additional opportunities to engage Indonesia police and prosecutors on IPR enforcement matters.

-- Finally, the USG through USAID has a major new Trade Capacity Building project with Minister of Trade Marie Pangestu. This three-year project assists the Ministry to build and strengthen its legal staff in order to more effectively and professionally engage in international trade dialogue. The three year \$15 million project is critical to enhancing the body of Trade Law, Regulation and Policy that will promote Indonesia's ongoing participation in regional

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and global trade pacts, including to those related to IPR.

Requested Funding

19. Based on estimates from DOJ/ICITAP, senior technical advisors require approximately USD 300,000 in basic funding per year. Each advisor would need travel and training budgets. Estimate travel costs are USD 5,000 for domestic travel and \$20,000 for regional travel (including accompanying GOI officials). The cost of four training sessions per year, including the use of foreign trainers, is approximately USD 40,000. Therefore, to fund the project, Embassy requests USD 365,000 in INL FY2006 Intellectual Property Rights (IPR) Training and Technical Assistance Program funds. DOJ/ICITAP representatives at post have agreed to assist in the administration of this project.

PASCOE